109-401

# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

No. ~~262~~. 41

JOHN J. GILFILLAN, PLAINTIFF IN ERROR,

vs.

THE UNION CANAL COMPANY OF PENNSYLVANIA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

**FILED SEPTEMBER 6, 1880.**

# SUPREME COURT OF THE UNITED STATES.

## No. 262.

JOHN J. GILFILLAN, PLAINTIFF IN ERROR,

vs.

THE UNION CANAL COMPANY OF PENNSYLVANIA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

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1 In the supreme court for the eastern district, State of Pennsylvania.

*Copy of docket entries.*

Thos. Hart, jr.

THE UNION CANAL CO., PLAINTIFF IN E'R, *vs.* JOHN G. GILFILLAN, DEF'T IN E'R. } 45.

Jas. Duval Rodney. Jan. 2, 1880.

S. C. July term. Writ of error to the court of common pleas of the county of Philad'a, No. 3. Ret'ble the first Monday Jan., 1880. Exit June 3, '79.

Dec. 29, 1879. Record ret'd. Assignments of error filed.

Jan. 22, 1880. Argued.

March 1, 1880. The judgment is reversed and judgment is now entered for the defendant below on the case stated.

PAXSON, *Justice.*

Mercur & Gordon, justices, dissent.

M'ch 6, 1880. Writ of error from the United States Supreme Court brought into office.

M'ch 6, 1880. Citation filed.

M'ch 9, 1880. Copy of writ of error filed.

2 *Exemplification.*

PHILADELPHIA COUNTY,
*State of Pennsylvania, sct:*

Among the records and proceedings of the court of common pleas No. 3, for the county of Philadelphia, State of Pennsylvania, the following may be found as matter of file and of record at No. 851, June term, 1877, to wit:

*Docket entries.*

June term, 1877.

Rodney.

JOHN G. GILFILLAN *vs.* THE UNION CANAL COMPANY. } 851.

T. Hart, jr.

Sum'y case. Exit June 30, 1877. Ret'ble 1' Mon. July, 1877. Served M'ch 12, 1879. Case stated, filed.

March 12, 1879. Agreement of counsel filed, agreeing that the copy and affidavit of defence be withdrawn.

May 10, 1879. Judgment for plaintiff on case stated for $4,200.

June 7, 1879. Writ of error brought into office (S. C., July, '79, 45.)
Certified from the record.
Dec. 2d, 1879.
[SEAL.] E. J. LINDSAY,
*Pro P'th'y.*

3 In the court of common pleas for the city and county of Philadelphia, No. 3, June t., 1879.

JOHN G. GILFILLAN
*vs.*
THE UNION CANAL COMPANY.

Issue summons. Case ret'ble 1st Monday of July, 1877.
RODNEY.
JUNE 30, 1877.

C. P. No. 3, June t., 1877.

JOHN G. GILFILLAN
*v.*
THE UNION CANAL COMPANY. } No. 851.

Please enter my appearance for the defendant.
THOMAS HART, JR.,
*Att'y for Def't.*

To PROTH'Y C. P.
JULY 6, 1877.
Filed July 6, 1877.

4 *Summons.*

COUNTY OF PHILADELPHIA, *ss:*

The commonwealth of Pennsylvania to the sheriff of Philadelphia County, greeting:

[SEAL.] We command you that you summon The Union Canal Company, late of your county, so that they be and appear before our judges, at Philadelphia, at our court of common pleas No. 3, for the county of Philadelphia, to be holden at Philadelphia, in and for said county of Philadelphia, the first Monday of next, there to answer John G. Gilfillan of a plea of trespass on the case, etc. And have you then there this writ.

Witness the honorable James R. Ludlow, president of our said court, at Philadelphia, the 30th day of June, in the year of our Lord one thousand eight hundred and seventy-nine.

J. C. ADDIS JR.,
*Pro Prothonatory.*

5 Served The Union Canal Company by giving a true and attested copy of the within writ to Frederick Fraley, director of

the said company, and making known to him the contents thereof of June 30, 1877.

So answers.

A. A. LAWS,
*Deputy Sheriff.*
W. H. WRIGHT,
*Sheriff.*

(Copy.)

(Indorsed:) 851. June term, 1877. C. P. No. 3. John G. Gilfillan v. The Union Canal Company. Summons. Case. Rodney.

C. P. No. 3. June term, 1877.

6 JNO. G. GILFILLAN
*v.*
THE UNION CANAL COMPANY. } No. 851.

It is hereby agreed that the copy filed and affidavit of defence shall be withdrawn and taken off the file, a case stated having been filed this day.

RODNEY, *For P'lff.*
THOMAS HART, JR.,
*For Deft's.*

MARCH 12, 1879.

7 JOHN G. GILFILLAN
*vs.*
THE UNION CANAL COMPANY. } C. P. No. 3. June term, 1877. No. 851.

*Case stated.*

It is hereby agreed that the following facts be stated for the opinion of the court:

I. The plaintiff holds a number of coupons, amounting in all to the sum of $4,200, running from November 1st, 1857, to May 1st, 1877, inclusive, for interest upon four certain bonds of the defendant, all dated November 1st, 1853, being No. 899 for $500, and Nos. 116, 1290, and 1661, for $1,000 each, said bonds being secured by a mortgage dated August 23d, 1853.

II. Upon April 10th, 1862, and April 22d, 1863, respectively, two certain acts of assembly, being supplements to the several acts theretofore passed relating to The Union Canal Company of Pennsylvania, were approved.

Copies of the said acts are annexed hereto as a part of this case stated.

III. The said act of April 10th, 1882, was accepted by the corporation defendant at a general meeting of its stockholders, called in accordance with law and held May 26th, 1862.

IV. Under and by virtue of the said act of assembly the stockholders of the said corporation defendant, and the holders of the bonds secured by the mortgage of August 23d, 1853, at a general meeting duly called and held June 9th, 1862, the said stockholders and the said bondholders,

acting and voting thereat as separate bodies, did, by a majority of the votes of each body, duly taken and counted, enter into an agreement providing for the carrying out of the provisions of the said act of April 10th, 1862, wherein and whereby it was provided, among other things, that all interest on the said bonds theretofore accrued or due, or thereafter falling due or accruing, should be paid out of the net income, revenues, or profits of the said corporation, accruing after May 1st, 1861, and that there should at no time be any coupons paid or payable otherwise than out of and from the clear net income and profits of the business of the corporation, and that said net income and profits should be received in full consideration for its coupons falling due.

V. The notice specified in the proviso to the third section of the act of April 10th, 1862, was duly published, and the plaintiff, who was then the holder of the bonds, the coupons of which are now sued on, had actual knowledge of the said notice and of the matter thereof.

VI. The said plaintiff, did not actually take part in the making of the said agreement, nor did he signify his assent in writing thereto, nor did he ever file with the president of the said corporation his refusal in writing to concur therein.

VII. The whole amount of the bonds secured by the said mortgage of August 23d, 1853, and outstanding is $2,500,000. The whole amount of the bonds so secured held by persons who did file with the president of the said corporation their refusal in writing to concur in the said agreement was $85,000.

VIII. Since the making of the said agreement, to this time, there has not been any clear net income and profits of the business of the said corporation.

IX. If the court shall be of opinion that the plaintiff is entitled to recover, judgment shall be entered against the defendant for the sum of $4,200; otherwise for the defendant.

X. Each party reserves the right to take a writ of error to the judgment of the court.

RODNEY, *For Plaintiff.*
THOMAS HART, JR.,
*For Defendant.*

(Indorsed:) 851. June 7, 1877. John G. Gilfillan vs. The Union Canal Company. Case stated. Filed M'ch 12, '79. May 10, 1879. Judgment for pl'ff. Rodney.

8 EASTERN DISTRICT OF PENNSYLVANIA, *set:*

[SEAL.] The Commonwealth of Pennsylvania to the justices of the court of common pleas for the county of Philadelphia, No. 3, greeting:

Because in the record and process, and in rendering the judgment in a certain plaint, which was in our said court, before the judges of the same court, by our writ, between The Union Canal Company, plaintiff in error, and John G. Gilfillan, defendant in error, as it is said manifest error hath intervened, to the great damage of the said plaintiff in error, as by complaint of the said plaintiff in error we have received information: We, willing that, if any error be therein, it should be corrected and that speedy justice be done to the parties in this part, do command you that, if judg-

ment, as it is said, be rendered in the said plea, then the record and process and all things touching the same, under your seals, distinctly and openly, you have before the justices of our supreme court of Pennsylvania, at a supreme court to be held at Philadelphia, in and for the eastern district of said commonwealth on the first Monday of Janu'y next, and this writ; that the record and process aforesaid being inspected, we may further cause to be done what of right and according to our laws and customs ought.

Witness the honorable Daniel Agnew, doctor of laws, chief justice of our said supreme court, at Philadelphia, the fourth day of June, in the year of our Lord one thousand eight hundred and seventy-eight, and of the commonwealth the one hundred and third.

J. ROBINSON,
*Pro Prothonotary.*

9 (Indorsed:) No. 851, June 7, 1877. No. 45, July term, 1879. Supreme court. The Union Canal Co., plaintiff in error, vs. John G. Gilfillan, defendant in error. Writ of error to the court of common pleas for the county of Philadelphia. Returnable the first Monday of January, 1880. Rule on the defendant in error to appear and plead on the return day of the writ. I certify that are bail in error in the above case, in the sum of . Brought into office June 7, 1879. Thomas Hart. Dec. 29, 1879, rec'd return.

10 *Supreme court of Penn'a, July t., '79.*

THE UNION CANAL COMPANY, PLAINTIFFS IN error,
*vs.*
JOHN G. GILFILLAN, DEFENDANT IN ERROR. } No. 45. E. D.

*Specifications of error.*

First. The court below erred in entering judgment for the plaintiff upon the case stated.

Second. The court below erred in not entering judgment for the defendant upon the case stated.

11 THE UNITED STATES OF AMERICA, *ss:*

To The Union Canal Company of Pennsylvania, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden in Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, wherein John J. Gilfillan is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error, as in said writ of error mentioned, shall not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness my hand this third day of March, in the year of our Lord one thousand eight hundred and eighty.

GEO. SHARSWOOD,
*Chief Justice of Pennsylvania.*

Service of this citation accepted for The Union Canal Company. March 6, 1881.

THOMAS HART, JR.

(Indorsed:) 45. July, 1879. Gilfillan vs. Union Canal Co. Citation allowed per Sharswood, C. J. March 3, '80. Copy. Filed March 6, 1881.

12 S. C. Eastern district.

THE UNION CANAL COMPANY
*vs.*
JOHN G. GILFILLAN.

Error to com. pleas, No. 3, of the county of Phil'a.

PAXSON, *J.:*

We find nothing in the act of April 10th, 1862, relating to the Union Canal Company that is objectional upon constitutional grounds. The object of the act was to provide a scheme to relieve the company from its financial difficulties. It had issued bonds to the amount of $2,500,000, which were secured by a first mortgage. The coupons upon these bonds had been unpaid for years. The scheme contemplated the surrender of the over-due coupons by the bondholders, & the funding of them by the company in a new issue of bonds to the extent of $500,000, to be secured by the same mortgage. The last series of bonds were to be used in settling the liabilities of the company. This would make the whole amount of bonds to 3,000,000, the coupons upon all of which were
13 to be paid out of the net income, revenues, & profits of the company, after May 1, 1861, & not otherwise. In other words of the company earned no profits the bondholders were to receive no interest. The act further provided for the calling of a public meeting of the stockholders & bondholders, whereat said stockholders & bondholders, voting separately, might enter into an agreement providing for carrying out the provisions of the act. But here the legislature appears to have taken especial care not to abridge or impair the rights of dissenting bondholders. Those who refused to enter into the agreement were not to be bound thereby; up to this point there certainly was nothing to impair the obligation of the contract between the company & its bondholder. But the act contained the further provision that every bondholder who "shall fail to file with the president of said corporation his or her refusal in writing to concur in the said agreement within three months from the date thereof such bondholder shall be taken to have agreed to the same." The
14 learned court below held this provision to be unconstitutional in this, that it impaired the obligation of the contract between the company & the bondholder.

It may be conceded that a debtor, whether a natural or an artificial

person, cannot say to his creditor, unless you signify your dissent from a certain proposal by a given time I will hold you to a consent & act accordingly. The question here is, may the legislat*ion*, as the representatives of the people, in the exercise of the sovereign will, require a creditor of an embarrassed corporation to express his will within a reasonable time in regard to measures believed to be essential to the interests of both creditors and stockholders. The power of the legislature is supreme, except where restrained by the fundamental law. No presumption arises that a law is unconstitutional; on the contrary, every presumption is in favor of the constitutionality of an act of assembly.

15 As bearing upon this question, it is proper to say that we have upon our statute books a large amount of legislation in which the principle embodied in the act of 1862 is distinctly recognized. It is not new, & I am not aware that its constitutionality has ever before been doubted. The act of Feb'y 17, 1847 (P. L., 142), entitled "An act for the relief of the creditors of the Philadelphia, Germantown, and Norristown Railroad Company," contains a provision substantially similar to the one in question. So does the act of April 7, 1852 (P. L., 261), passed for the protection of the creditors of the Schuylkill Navigation Company. The same principle will be found in the acts of April 10, 1852 (P. L., 316), & April 17, 1861 (P. L., 319), relating to the Susquehanna Canal Company, & the act of April 11, 1862 (P. L., 422), for the relief of the Chester Valley Railroad Company. The question now under consideration does not appear to have been raised under either of the above-mentioned acts, & their existence cannot therefore be accepted as conclusive evidence of

16 their constitutionality. They come to us, however, with the approval of two of the co-ordinate departments of the government, & the fact that they have been acted upon in the adjustment of large & important interests for so many years is not without weight in the consideration of a question of this kind.

It is not difficult to find in the general legislation of the State much that bears a close analogy to this section of the act of 1862. Thus the act of 16th May, 1861 (Purdon, 1223), authorizing the merger of one railroad company by another provides that the remedy thereby given to dissatisfied stockholders shall be pursued within thirty days after the execution of the agreement for consolidation. The act of 24th March, 1865 (Purdon, 1225), authorizing the consolidation of railroad companies contains a like provision. It is true these acts affect the stockholders, who may be presumed to have bought their stock subject to the general legislative control over the affairs of corporations.

In like manner a creditor must be presumed to have bought his

17 bond subject to such power so far as it exists, & to the general right of the legislature to change or modify his remedy to a reasonable extent, & so that it shall not deny his right. All of the foregoing legislation comes within the recognized power of the general assembly to pass statutes of limitation & stay laws. The constitutionality of such laws has been so often decided that it would be an affectation of learning to cite the authorities. The one question that arises in all such cases is the reasonableness of the limitation. The third section of the act of 1862 is an act of limitation. It takes away no man's right & violates no man's contract. The creditor may dissent & is not therefore affected by the proceedings; all

that is required of him, is to express his will in a particular way within three months. No one can or does pretend that the time given is unreasonable; may, then, the creditor be required to signify his dissent upon pain of being held to an assent in case of neglect to do so? The argument that the law cannot compel a creditor to do any act in order to preserve his claim
18 is unsound. He may be compelled to act. The statute of limitations is a case in point. It compels the creditor to sue within the statutory period or lost his claim. A man must so exercise his rights in a community of law as not to needlessly embarrass or injure the rights of others. All this act of assembly does is to require the creditor to say whether he will accept or refuse the agreement. The rights & interests of other parties require that he shall do this. There are many instances in the laws relating to insolvents, where a creditor is bound by the act of a majority, or of a given number of crditors, not less than a majority; of this nature is the seven years' exemption from execution; on consent of a majority in number & value of the insolvent's creditors contained in the act of 1836. The bankrupt act contains provisions which recognize the same principle; all this leads to the conclusion that there is power in the law to require a creditor of an embarrassed corporation, or individ-
19 ual to indicate his dissent from measures deemed essential to the common welfare of creditors & debtor, or else suffer the very mild penalty of being held to an assent. And this violates no right of the creditor guaranteed to him by the fundamental law.

The judgment is reversed, & judgment is now entered for the defendant below upon the case stated.

Mercur and Gordon, justice', dissent.

(Indorsed:) S. C. eastern district. Jan. 22. The Union Canal Company vs. John G. Gilfillan. Error to C. P. No. 3. Judgment reversed, & judgment for defendant below upon the case stated. Paxson, j. Mercer and Gordon, justices, dissent. Filed M'ch 1, 1880.

20 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the judges of the supreme court of the State of Pennsylvania, greeting:

Because in the record and proceedings, as also in the rendition of the judgment, which is in the said supreme court before you, or some of you, being the highest court of law and equity of said State in which a suit could be had between John G. Gilfillan and the Union Canal Company, the latter being plaintiff in error, and the said John G. Gilfillan being defendant in error, wherein was drawn in question the validity of two statutes of the State of Pennsylvania, on the ground of their being repugnant to the Constitution of the United States, and the decision was in favor of their validity, and against the right, title, and immunity, specially set up and claimed under the Constitution of the United States, a manifest error hath happened, to the great damage of the said John G. Gilfillan as is said and appears by his complaint: We being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done the
21 parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send

the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States at the Capitol in the city of Washington, together with this writ, so that you have the same at the said place before the justices aforesaid on the second Monday of October next; that, the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States ought to done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Philadelphia, the third day of March in the year of our Lord one thousand eight hundred and eighty, and of the Independence of the United States the one hundred and fourth.

[SEAL.] SAMUEL BELL,
*Clerk U. S. Cir. Court E. D. of Penn'a.*

22 (Indorsed:) 45. July t, 1879. John G. Gilfillan, plaintiff in error v. The Union Canal Company, defendant in error. Writ of error from the Supreme Court of the United States to the supreme court of Pennsylvania. Filed M'ch 6, 1880. Rodney.

23 I, Benjamin E. Fletcher, prothonotary of the supreme court for the eastern district of Pennsylvania, do certify the within to be a true and correct copy of the record, copy of opinion and decree as remains of record, and writ of error, citation, &c., as filed of record in the case of The Union Canal Company, plaintiff in error, and John G. Gilfillan, defendant in error, of July term, 1879, No. 45.

Witness my hand and seal of said court this fifteenth day of March, A. D. 1880.

[SEAL.] B. E. FLETCHER,
*Prothonotary.*

24 In the Supreme Cou't of the United States.

JOHN G. GILFILLAN, PLAINTIFF IN ERROR,
*vs.*
THE UNION CANAL COMPANY OF PENNSYLVANIA, defendant in error.

The plaintiff in error files the following specifications in error:

I. The two acts of the general assembly of the State of Pennsylvania, respectively approved the 10th of April, 1862, and the 23d of April, 1863, and respectively entitled "a further supplement to the several acts heretofore passed relating to The Union Canal Company of Pennsylvania and in conflict with section 10 of article 1st of the Constitution of the United States, which provides, inter alia, that no State shall * * * pass any * * * laws impairing the obligation of contracts.

II. The judgment below impairs the obligation of the contract
25 created between the said Union Canal Company of Pennsylvania and the said John G. Gilfillan, and is in conflict with said section 10th of the 1st article of the Constitution of the United States.

Wherefore the plaintiff in error, for the errors above assigned, pray the Supreme Court of the United States to reverse the judgment of the court

below, namely, the judgment entered by the supreme court of the State of Pennsylvania.

JAS. DUVAL RODNEY,
*Of Counsel for the Plaintiff in Error.*

(Indorsed:) In the Supreme Court of the United States. Error to the s. c. of Penn'a. John G. Gilfillan, plaintiff in error, vs. The Union Canal Company of Pennsylvania, defendant in error. Specifications of errors. Rodney.

(Also indorsed:) Supreme Court U. S., 1880. October term. No. 852. Gilfillan vs. Union Canal Co. of Penn'a. Assignment of errors. Filed 6th Sept., 1880.

(Indorsement on cover:) No. 262. John J. Gilfillan, plaintiff in error, vs. The Union Canal Company of Pennsylvania. Pennsylvania supreme court. Filed 6th September, 1880.

109-401

OFFICE SUPREME COURT U.S.
FILED
APR 12 1883
JAMES H. McKENNEY, CLERK

*No. 262.*

# In the Supreme Court of the United States.

## Writ of Error

To the Supreme Court of the State of Pennsylvania.

JOHN G. GILFILLAN,

*Plaintiff in Error,*

*vs.*

THE UNION CANAL COMPANY OF PENNA.

*Defendant in Error.*

## Brief of Plaintiff in Error.

JAS. DUVAL RODNEY,

*Counsel for Plaintiff in Error.*

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below, namely, the judgment entered by the supreme court of the State of Pennsylvania.

JAS. DUVAL RODNEY,
*Of Counsel for the Plaintiff in Error.*

(Indorsed:) In the Supreme Court of the United States. Error to the s. c. of Penn'a. John G. Gilfillan, plaintiff in error, vs. The Union Canal Company of Pennsylvania, defendant in error. Specifications of errors. Rodney.

(Also indorsed:) Supreme Court U. S., 1880. October term. No. 852. Gilfillan vs. Union Canal Co. of Penn'a. Assignment of errors. Filed 6th Sept., 1880.

(Indorsement on cover:) No. 262. John J. Gilfillan, plaintiff in error, vs. The Union Canal Company of Pennsylvania. Pennsylvania supreme court. Filed 6th September, 1880.

109-401

OFFICE SUPREME COURT U.S.
FILED
APR 12 1893
JAMES H. McKENNEY, Clerk.

*No. 262.*

# In the Supreme Court of the United States.

## Writ of Error

TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

JOHN G. GILFILLAN,

*Plaintiff in Error,*

*vs.*

THE UNION CANAL COMPANY OF PENNA.

*Defendant in Error.*

## Brief of Plaintiff in Error.

JAS. DUVAL RODNEY,

*Counsel for Plaintiff in Error.*

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*No. 262.*

# In the Supreme Court of the United States.

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## Writ of Error

TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

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JOHN G. GILFILLAN,

*Plaintiff in Error,*

*vs.*

THE UNION CANAL COMPANY OF PENNA.

*Defendant in Error.*

## STATEMENT OF THE CASE.

The plaintiff in error holds a number of coupons, amounting in all to $4200, running from November 1, 1857, to May 1, 1877, for interest due upon four bonds dated November 1, 1853, issued by the defendants in error under act of Assembly dated April 18, 1853, and secured by mortgage dated August 23, 1853. Suit was brought on these coupons in the Court of Common Pleas, No. 3, of Philadelphia, to June T., 1877. As a defence, two acts of Assembly were interposed, dated respectively April 10, 1862, and April 23, 1863, copies of which acts are annexed to the case stated, page 5. Upon the case that was stated for the opinion of the court (see next page), these acts were declared to be in violation of the Constitution of the United States, and judgment was entered for the plaintiff on May 10, 1879, for $4200. The defendants took a writ of error to the Supreme Court of the State of Pennsylvania, and in an opinion of a majority of the judges, filed March 1, 1880, this judgment was reversed, and judgment entered for the defendants below on the case stated. To this judgment of the Supreme Court of Pennsylvania this writ of error has been sued out.

## CASE STATED.

*(pages 3 and 4 of the Transcript.)*

IN THE COURT OF COMMON PLEAS, NO. 3.

JUNE, 1877. 851.

JOHN G. GILFILLAN

*v.*

THE UNION CANAL COMPANY.

## CASE STATED.

It is hereby agreed that the following facts be stated for the opinion of the court:

I. The plaintiff holds a number of coupons amounting in all to the sum of $4200, running from November 1st, 1857, to May 1st, 1877, inclusive, for interest upon four certain bonds of the defendant, all dated November 1st, 1853, being No. 899 for $500, and Nos. 116, 1290, and 1661, for $1000 each—said bonds being secured by a mortgage dated August 23d, 1853.

II. Upon April 10th, 1862, and April 22d, 1863, respectively, two certain acts of Assembly, being supplements to the several acts theretofore passed, relating to the Union Canal Company of Pennsylvania, were approved.

Copies of the said acts are annexed hereto as a part of this case stated.

III. The said act of April 10th, 1862, was accepted by the corporation defendant at a general meeting of its stockholders, called in accordance with law, and held May 26th, 1862.

IV. Under and by virtue of the said act of Assembly, the stockholders of the said corporation defendant, and the

holders of the bonds secured by the mortgage of August 23d, 1853, at a general meeting duly called and held June 9th, 1862, the said stockholders and the said bondholders acting and voting thereat as separate bodies, did, by a majority of the votes of each body, duly taken and counted, enter into an agreement providing for the carrying out of the provisions of the said act of April 10th, 1862, wherein and whereby it was provided, among other things, that all interest on the said bonds theretofore accrued or due, or thereafter falling due or accruing, should be paid out of the net income, revenues, or profits of the said corporation, accruing after May 1st, 1861, and that there should at no time be any coupons paid or payable otherwise than out of and from the clear net income and profits of the business of the corporation, and that said net income and profits should be received in full consideration for its coupons falling due.

V. The notice specified in the proviso to the third section of the act of April 10th, 1862, was duly published, and the plaintiff, who was then the holder of the bonds, the coupons of which are now sued on, had actual knowledge of the said notice and of the matter thereof.

VI. The said plaintiff did not actually take part in the making of the said agreement, nor did he signify his assent in writing thereto, nor did he ever file with the president of the said corporation his refusal in writing to concur therein.

VII. The whole amount of the bonds secured by the said mortgage of August 23d, 1853, and outstanding, is $2,500,000. The whole amount of the bond so secured, held by persons who did file with the president of the said corporation their refusal in writing to concur in the said agreement, was $85,000.

VIII. Since the making of the said agreement to this time there has not been any clear net income and profits of the business of the said corporation.

IX. If the court shall be of opinion that the plaintiff is

entitled to recover, judgment shall be entered against the defendant for the sum of $4200; otherwise for the defendant.

X. Each party reserves the right to take a writ of error to the judgment of the court.

RODNEY,
For Plaintiff.
THOMAS HART, JR.,
For Defendant.

March 10th, 1879.

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## THE ACT OF APRIL 10TH, 1862.

A FURTHER SUPPLEMENT TO THE SEVERAL ACTS HERETOFORE PASSED RELATING TO THE UNION CANAL COMPANY OF PENNSYLVANIA.

WHEREAS, it hath been represented to the Legislature that a very large majority of the bondholders of the Union Canal Company of Pennsylvania, who are secured by the first mortgage of that corporation, dated the twenty-third day of August, one thousand eight hundred and fifty-three, for the sole and exclusive purpose of entirely freeing the said corporation from all indebtedness or obligation, save its funded or first mortgage debt, having expressed their willingness to contribute, for distribution among the general creditors thereof, such amount of the over-due and unpaid coupons annexed to their respective bonds, to be taken, held, treated, and considered as bonds of the said corporation, bearing date, and issued November first, one thousand eight hundred and sixty-one, with coupons for the interest thereon, at six per cent. per annum, payable semi-annually, after the first day of November, one thousand eight hundred and sixty-one, thereto attached, and entitled after the said first day of November, one thousand eight hundred and sixty-one, equally and ratably with the bonds of the said corporation, authorized by law, and heretofore issued to the amount of two millions five hundred thousand dollars, to

all the privileges, benefits, and advantages of the said first mortgage of the said corporation, dated the twenty-third day of August, one thousand eight hundred and fifty-three, as may be necessary to settle or arrange the claims of the said creditors; and that the said creditors are willing to receive the same in settlement or arrangement of their respective debts and claims, and that the stockholders of the said corporation are content, in consideration of the foregoing, to unite with the said bondholders, and to the creditors, who shall have received coupons in settlement of their claims, as aforesaid, the management and control of the affairs of the said company, without impairing, or in any wise affecting, the prior lien or security of the aforementioned and referred-to first mortgage of the said corporation; therefore,

SECTION 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same*, That it shall and may be lawful for the said Union Canal Company to make and issue, to such of the said general creditors as may agree to receive coupons in settlement or arrangement of their respective claims, as aforesaid, in lieu of the coupons so received by them, bonds bearing date May first, one thousand eight hundred and sixty-one, with coupons for the interest thereon, at six per cent. per annum, payable semi-annually, after the first day of May, one thousand eight hundred and sixty-one, thereto attached, the principal of which shall become due and payable at the same time as the bonds heretofore issued and secured by the said mortgage; and the holders of the bonds so substituted for coupons shall be entitled, on and after the first day of May, Anno Domini one thousand eight hundred and sixty-one, equably and ratably with the holders of the first mortgage bonds of the said corporation, authorized by law, and heretofore issued, to the amount of two millions five hundred thousand dollars, to the benefit and protection of the first mortgage of the said corporation, dated the twenty-third day

of August, Anno Domini one thousand eight hundred and fifty-three, both as to the principal thereof, and the interest accruing thereupon: *Provided, however*, That the whole amount of bonds thus made and issued shall not exceed the sum of five hundred thousand dollars, and that the coupons so as aforesaid contributed, or the bonds issued in lieu thereof, shall have no legal or equitable right or claim to the payment of any interest thereon by the said corporation, or under the provisions of any trust created by the said corporation prior to the first day of May, Anno Domini one thousand eight hundred and sixty-one; but that semi-annual interest on the said contributed coupons or substituted bonds, with semi-annual coupons attached, at the rate of six per cent. per annum, shall be paid, on and after the first day of November, Anno Domini one thousand eight hundred and sixty-one, equally and ratably with the interest or semi-annual coupons of the bonds of the said corporotion, authorized by law, heretofore issued, to the amount of two millions five hundred thousand dollars, and secured by the aforesaid first mortgage of the said corporation, heretofore accrued or due, or hereafter falling due or accruing, out of the net income, revenues, or profits of the said corporation, accruing after the first day of May, Anno Domini one thousand eight hundred and sixty-one: *Provided, always*, That there shall, at no time, be any coupons paid or payable otherwise than out of and from the clear net income and profits of the business of the corporation; and the said net income and profits shall be received in full consideration for its coupons falling due.

SEC. 2. That at all elections and meetings of the said corporation, to be held after the acceptance by it of the provisions of this act, as hereinafter provided, the right of voting shall be vested in the stockholders, the bondholders secured by the said mortgage, and in such persons as shall have received or hold bonds in lieu of coupons, under the provisions of the first section of this act; and each of the said bondholders shall be entitled to give one vote for every

fifty dollars of loan held by him, at all such elections or meetings of the said corporation; and while the said bond or debt of the said corporation, secured by the aforesaid first mortgage, bearing date August twenty-third, Anno Domini one thousand eight hundred and fifty-three, remains unsatisfied, the president, manager, secretary, and treasurer of the said corporation must possess the qualifications for eligibility of owning, and continuing to own, during their term of office, a first mortgage bond of said corporation to the value of at least five hundred dollars: *Provided, nevertheless*, That the exercise of such right of voting by the said bondholders, or any of them, as hereinbefore authorized or conferred, shall in no way or manner whatever be held, deemed, or construed to affect, alter, or impair, in any wise the prior liens or security of the hereinbefore mentioned or referred first mortgage, held or possessed by the said bondholders, or any of them, but that such mortgage, lien, or security shall remain wholly unaffected and unimpaired by such act of suffrage, or any other act under or by virtue of the provisions of this act, on the part of the said bondholders, or any of them, or by any act of the officers or managers of the said corporation so as aforesaid elected by them.

SEC. 3. That it shall and may be lawful for the managers of the said corporation, to call a general meeting of the stockholders and of the holders of bonds, now secured by the said mortgage, as soon after the passage of this act as they shall deem expedient, and upon the notice now required for convening meetings of the stockholders; and the said meeting, or any adjourned meeting therefrom (the said stockholders and the bondholders so secured, acting and voting thereat as separate bodies), may, by a majority of the votes of each body, to be taken and counted as provided in the second section hereof, enter into an agreement, providing for the carrying out of the provisions of this act, and for the settlement of the affairs and liabilities of the said corporation, on

such terms and conditions, not inconsistent with the provisions of this act, as may appear to them just and equitable, which agreement shall be binding on the said corporation, and on all such of the said last-mentioned bondholders as shall signify their assent in writing thereto; and in case any such bondholder shall fail to file, with the president of the said corporation, his or her refusal, in writing, to concur in the said agreement, within three months from the date thereof, such bondholder shall be taken to have agreed to the same; and in case any such bondholder shall refuse, in writing, to concur in the said agreement, such persons as may have received bonds, in lieu of coupons, under the first section of this act, and all other persons who may have taken interest under, or acted on the faith of such agreement, shall not be prejudiced by having so done; and all new evidences of indebtedness, held or taken by them, shall be deemed to represent their respective original claims and demands, in all their legal positions and rights, so that in any ultimate settlement of the liabilities of the corporation, either in full or *pro rata*, they shall be considered, as against such refusing bondholdors, restored to their original positions and rights, and no advantage shall be given, to any refusing bondholder, over them: *Provided*, *however*, That the said corporation shall, as soon as practicable after the making of the said agreement, publish, in at least two daily newspapers of the city of Philadelphia, at least three times a week, for the period of four weeks, a notice, stating that an agreement had been formed, on the day of the date of the said agreement, between the stockholders and first mortgage bondholders of the company, for the adjustment of the affairs thereof, and calling upon such bondholders as had not taken part therein, to express in writing their assent to the same, or their dissent therefrom, on or before the expiration of the three months above mentioned.

SEC. 4. That all persons, holding either stock or bonds of the said corporation, secured as aforesaid, in any fidu-

ciary or representative capacity, are hereby authorized to consent to the said agreement, and to carry out the provisions thereof, so far as concerns the trust property in their charge, should they deem it to the interest of their trust so to do.

SEC. 5. That whenever the said corporaton shall have expressed its acceptance of the provisions of this act, and two-thirds in value of the bondholders, secured by the said first mortgage, shall have given their assent to the agreement in the third section of this act mentioned, then all the estate and property, real and personal, and all the franchises and corporate privileges, which the said corporation, by indenture, dated the twenty-eighth day of October, Anno Domini one thousand eight hundred and fifty-seven, recorded in the office of the recorder of deeds of Dauphin County, in Mortgage-book N, page two hundred and two, *et cetera;* in that of Lebanon County, in Mortgage-book B, page seven hundred and ninety-nine, *et cetera;* in that of Berks County, in Mortgage-book W, page 709, and in that of Schuylkill County in Mortgage-book N, page ——, granted and conveyed to J. Rodman Paul, R. Rundle Smith, and Oscar Thompson, and to the survivors and survivor of them, and to their heirs, executors, administrators, or assigns of such survivor, in trust for the uses and purposes therein particularly set forth, shall immediately revest in said corporation, its successors and assigns forever, under and subject, nevertheless, to the several trusts set forth in the said indenture, except as modified or controlled by the provisions of this act; and the said J. Rodman Paul, R. Rundle Smith, and Oscar Thompson, trustees as aforesaid, shall thereupon reconvey the legal title of the said estate and franchises to the said corporation, and upon the final settlement of their accounts, may be discharged from their office or trust, as in other cases.

SEC. 6. That this act shall not go into effect until its provisions shall have been accepted by the said corporation, at

a general meeting of the stockholders, called in accordance with law.

JOHN ROWE,
Speaker of the House of Representatives.
LOUIS W. HALL,
Speaker of the Senate.

Approved the tenth day of April, Anno Domini one thousand eight hundred and sixty-two.

A. G. CURTIN.

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## THE ACT OF APRIL 22D, 1863.

A FURTHER SUPPLEMENT TO THE SEVERAL ACTS HERETOFORE PASSED, RELATING TO THE UNION CANAL COMPANY OF PENNSYLVANIA.

WHEREAS, In pursuance of the authority contained in the said act of Assembly, passed the tenth day of April, Anno Domini one thousand eight hundred and sixty-two, the creditors of the said Union Canal Company, therein referred to, have agreed, or are about to agree, to accept, in satisfaction of their claims, bonds, to be issued as therein authorized, in lieu of coupons for interest, to be surrendered and cancelled, and certain of the said bondholders of said company have agreed to surrender coupons for interest, due on their bonds, to an amount sufficient for that purpose;

AND WHEREAS, The stockholders of the said company have, as therein provided, accepted the said act of Assembly, and agreed to become bound by the terms thereof; and holders of the bonds of the company, secured by mortgages, to the amount of two million four hundred and fifteen thousand dollars, have, in the manner therein provided, also agreed to become bound by the provisions of the said act, whereby the

principal sum secured under the mortgages of the said company, heretofore made, is now (as respects all persons but such of the said bondholders as have refused to concur in and accept the said act, the principal of whose bonds amount to eighty-five thousand dollars), or will be, when the said bonds are issued, three millions of dollars, and the parties, thus assenting, have, by the terms of the said act, agreed that all interest on said bonds heretofote accrued, or hereafter to accrue, has, and shall be deemed, and taken, to have been fully satisfied and paid by the appropriation to their use, of the *pro rata* share of the net annual income of the said company, after the payment of all expenses, which said net income is to be divided among, and paid to them, the said shareholders, in the proportions of the amounts due to them respectively, on their coupons for interest;

And Whereas, It was provided in and by the said act of the tenth day of April, Anno Domini one thousand eight hundred and sixty-two, that upon the assent of two-thirds in value, of the said bondholders, and the acceptance of the said act by the said stockholders, the estate and property, real and personal, and all the franchises and corporate privileges which, by the indenture of the twenty-eighth day of October, Anno Domini one thousand eight hundred and fifty-seven, recited in the said act, were granted to J. Rodman Paul, R. Rundle Smith, and Oscar Thompson, in trust, should revest in the said corporation, under and subject, nevertheless, to the several trusts set forth in the said indenture, except as modified or controlled by the provisions of the said act of Assembly, which assent has been given, and the act accepted, whereby the said corporation is entitled to have the said property, mentioned in the said indenture of October twenty-eighth, one thousand eight hundred and fifty-seven assigned to them, as trustees, in lieu and stead of the said J. Rodman Paul, R. Rundle Smith, and Oscar Thompson, and as succesors, in the said trust, and the rights of the said creditors, bondholders, and

all others, who have accepted the said act, or taken any interest under the same, or acted on the faith of the agreement therein mentioned, are preserved, and are to remain and continue, as respects such non-concurring bondholders, as if nothing had been done under the said act of Assembly;

And Whereas, For the securing to the said bondholders and creditors, who have agreed, or may agree, to accept the bonds issued in lieu of surrendered coupons, who thereby become parties to the contract authorized by said act, and to the bondholders who have refused to accept the provisions of the said act, their said relative rights and interests in the property which, by the terms and conditions of the said act of the tenth day of April, Anno Domini one thousand eight hundred and sixty-two, are to become vested in the said corporation, upon the same trusts as are set forth and declared in respect thereof, in the said indenture of the twenty-eighth day of October, Anno Domini one thousand eight hundred and fifty-seven, recited in said act, it is necessary that the trusts of the indenture of October twenty-eighth, one thousand eight hundred and fifty-seven, should continue in the said corporation, as provided in the said act of Assembly, as long as any bondholders shall continue to refuse to accept the said act of Assembly and the contract therein authorized:

And Whereas, It is also necessary to the execution of the said trusts, that the corporation, so created and authorized to act as trustees under said indenture of October twenty-eighth, one thousand eight hundred and fifty-seven, in lieu and stead of the trustees therein named, should have and possess the power, out of and with the property thus assigned to it in trust, and the receipts therefrom, and from the franchises so assigned, to purchase, take, and hold coal, tools, and other property, real and personal, such as may be necessary for the carrying on and conducting the business of the said canal, and the exercise of the franchises of the corporation as trustees, under the terms of the said indenture of

October twenty-eighth, one thousand eight hundred and fifty-seven, in like manner as the said trustees might do, if the said assignment or surrender had never been made, but had continued in the trustees named in the said indenture; therefore,

SECTION 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same*, That after the said franchises and property, real and personal, shall have been assigned by the said trustees to the said corporation, in trust, as conemplated by the said act of Assembly, and from thenceforward, and so long as any bondholders of the said corporations, secured by mortgages on the corporate property and franchises shall continue to refuse to concur in and accept the said act of Assembly, the said corporation of the Union Canal Company shall be deemed and taken to have, hold, and possess the said franchises and property, and all receipts therefrom, and the rents, issues, income, or profits thereof, and all other property and effects thereafter to be by the said corporation acquired for the purpose of maintaining and conducting the work and the business of the canal, for and upon and under and subject to the same trusts, powers, provisos, provisions, and limitations as are set forth and contained in the above-recited indenture of October twenty-eighth, one thousand eight hundred and fifty-seven; and the said bondholders shall be entitled to have an account from the said corporation as trustees under the said indenture, of the annual receipts and expenditures in the prosecution and execution of the said trust, and the net annual income derived from the said canal, and in the prosecution of the said trust ascertained; which net income shall be divided, apportioned, and paid among and to the said bondholders in the manner they are entitled, preserving the relative rights of the said several classes of bondholders and parties interested in said trust, as provided in the said act of Assembly of the tenth of April, one thousand eight hundred

and sixty-two; and the sums which shall be found due to the bondholders accepting said act of Assembly, and parties to the contract thereby authorized and therein contained, shall be paid to and received by them respectively in satisfaction of all coupons for interest, which shall have accrued and become due and payable at the time of such account stated, as provided by the first section of the said act of Assembly; and the sums which shall be found due to the said bondholders not concurring in and accepting the said act and contract shall be paid to and received by them on account of the amount due to them, and with like effect as if the said act of Assembly had not been passed, and so that the relative rights and interests of the said parties shall be preserved and continue as provided by the third section of the said act; and the said corporation, in the prosecution of the said trust, shall be authorized to make reasonable and proper compensation to its officers and agents who are employed in and about the necessary business of the said trust, and shall be allowed all reasonable expenses, but shall not be entitled to make any charge by way of commissions on the receipts or disbursements; and in case any parties interested shall require the accounts of the said corporation to be filed and audited, it shall be lawful to proceed therefor in the Court of Common Pleas of the county of Philadelphia, in the same manner, and with like effect, and with the same right of appeal, as in case of an assignment for the benefit of creditors under existing laws; and the said bondholders who have refused to concur in the said act of Assembly of the tenth day of April, Anno Domini one thousand eight hundred and sixty-two, shall not, until they respectively do so concur and accept the provisions of the same in writing, delivered to the said corporation, be entitled to any of the privileges set forth in the said act, and any property which was the property of the said corporation, and was conveyed or held under the trusts aforesaid; and all property which shall be acquired and held for or in execution of the said trusts, shall, during the continuance thereof,

be freed and discharged from all liability to be taken in execution under proceedings by the said bondholders, or any creditor of the said corporation, otherwise than by proceedings to enforce the execution of the said trust, saving and reserving nevertheless, to the said bondholders, all rights heretofore secured to them under the mortgages of the twenty-third day of August, one thousand eight hundred and fifty-three, made by the said corporation to M. Brooke Bulkley, James W. Paul, and Charles H. Rogers, and of the twentieth day of October, one thousand eight hundred and fifty-seven, made by the said corporation to the said James W. Paul, and Charles H. Rogers, the survivors of the said mortgagees; which mortgages have been duly recorded; and also under the trusts in the said indenture of October twenty-eighth, one thousand eight hundred and fifty-seven, set forth and contained. *Provided*, That when all of the said bondholders secured by the said mortgages, shall have accepted the said act of Assembly of the tenth day of April, Anno Domini one thousand eight hundred and sixty-two, in the manner therein or hereby authorized and directed, and all persons, whose claims are secured by the indenture of October twenty-eighth, one thousand eight hundred and fifty-seven, shall have become parties to the agreement, set forth in the said act of Assembly, or have assented thereto, or have surrendered their claims, that the said corporation may, by deed, declare the same, and surrender the said trust; whereupon all of the said trusts shall cease, and the said property and franchises shall revest in the said corporation, as of their former estate, on the twenty-eighth day of October, Anno Domini one thousand eight hundred and fifty-seven, and immediately preceding the execution of the indenture of that date.

JOHN CESSNA,
Speaker of the House of Representatives.
GEORGE V. LAWRENCE,
Speaker of the Senate.

Approved the twenty-second day of April, Anno Domini one thousand eight hundred and sixty-three.

A. G. CURTIN.

The County Court entered judgment for forty-two hundred dollars, delivering an opinion in support thereof. A writ of error was sued out from the Supreme Court of the State upon the following

SPECIFICATIONS OF ERROR.

(*page 5 of the Transcript.*)

First. The Court below erred in entering judgment for the plaintiff upon the case stated.

Second. The Court below erred in not entering judgment for the defendant upon the case stated.

The Supreme Court reversed the judgment of the County Court, and entered judgment for the defendant below on the case stated, and filed the opinion set forth in the transcript, pages 7 and 8, to which judgment, in this Court, the following errors have been assigned (page 9 of transcript).

SPECIFICATIONS OF ERROR.

1. The two acts of the General Assembly of the State of Pennsylvania, respectively approved the 10th of April, 1862, and the 23d of April, 1863, and respectively entitled a further supplement to the several acts heretofore passed relating to the Union Canal Company of Pennsylvania, are in conflict with Section 10th of Article 1st of the Constitution of the United States, which provides, *inter alia*, that

no State shall . . . . . pass any . . . . laws impairing the obligation of contracts.

II. The judgment below impairs the obligation of the contract created between the said Union Canal Company of Pennsylvania and the said John G. Gilfillan, and is in conflict with said Section 10th of the 1st Article of the Constitution of the United States.

## BRIEF OF ARGUMENT.

THIS is a narrow case, and it will be contended that it presents no serious objection to a reversal, other than the general reluctance which this court has often expressed to decide against the validity of a legislative act, or to revise the opinion of the highest law tribunal of a state.

All the facts being comprehended and agreed upon in the case stated, are beyond dispute.

The law, it is claimed, is elemental, no precedents appear among the many judgments of this court, and it is believed that the case is unique, or at any rate isolated.

The difficulties and doubts which have given rise to litigation, and which have exercised the talent of jurists, and made the application of the 10th section of the 1st Article of the Constitution perplexing, have been occasioned by the fact that the contract itself was inchoate or challenged.

Whether a charter needed a perfection which subsequent legislation claimed to offer, or whether one charter interfered with another or infringed upon it, as to rights granted to both (and a score of similar examples might be suggested), in each of these there was a question of the receptive quality of the contract for improvement or change.

In this case these elements of doubt do not appear.

The plaintiff in error was the owner of certain coupon bonds which were issued by the defendant corporation in August, 1853, payable in 30 years, secured by a mortgage of said date, under the authority of an act of the Pennsylvania Legislature, approved 15th of April, 1853; that they constituted a valid contract, has at no time been denied.

When suit was brought upon certain unpaid coupons, the acts of 1862 and 1863 were interposed as a defence, and it was claimed that they barred our recovery, because we had failed to file a dissent in writing within three months of a certain notice which was published in two Philadelphia newspapers, relating to certain agreements proposed by these acts.

To this defence we replied that under the 10th section of Article I. of the Consitution, which forbids the impairing of the obligation of contracts, we were not affected by their provisions.

There appear, therefore, for the consideration of the court three questions:

1. Was there a valid contract existing between these parties before the passage of these acts?

2. Did the acts of 1862 and 1863 impair the obligation of that contract?

3. Does the 10th section of Article I. of the United States Constition apply to these acts.

As to the first.

By reference to the case stated (page 3) it will be seen that there can be no question as to the full proportions of the contract executed or executory, and it will be further noticed that in reversing the judgment of the county court for $4200 in favor of the bondholder, the majority of the court, though they went so far as to ignore the distinction between a bondholder and a stockholder of an insolvent corporation, did not impugn the validity of the contract, so that the plaintiff in error may safely pass to the second point.

Did the acts of 1862 and 1863 impair the obligation of this contract?

The bondholders of this corporation had been its creditors for nearly nine years. They had purchased these bonds which constituted a contract for the payment of money, and deemed them a secure investment for the four following reasons:

1. Because the contract was to pay money under the seal of the corporation properly attested.

2. Because upon the bonds was noted the act of Assembly which authorized their issue.

3. Because the entire contract was set out within the four corners of the bonds which were to run for thirty years.

4. Because the Constitution of the United States protected the contract.

The plaintiff in error as holder of these bonds had a right to suppose that under the ordinary methods of business, the law of the land and the safeguards of the Constitution of the United States, as these grounds of public credit had been heretofore maintained, that he was under no obligation under his contract to save himself from injury, but to present these bonds for payment when the time for which they had to run had expired. There was nothing in the bonds themselves, in the act which authorized their issue, which gave him notice, or from which he could infer notice, that he was to be on his guard against subsequent legislation. The risk he took was the failure of the company to pay the bonds and interest when due. The bonds came to him with "the approval of two co-ordinate departments of the government." If that fact had weight with the court below, as is stated in its opinion in deciding a grave constitutional question, it would clearly encourage the plaintiff in error to believe in the perpetuity of his contract, and would naturally set at rest any doubt of his security. At the time the relation of debtor and creditor, or stockholder and bondholder was entered into, there was no comity expected, no privity claimed. Under these circumstances, being in possession of his bonds, we maintain that his only concern was their market value, his investment as to matter of form was secure, and in perfect reliance on his legal protection, he might safely have absented himself to search for the Northwest passage.

Now come the acts of 1862 and 1863, which we contend impair the obligation of this contract (so well defined) be-

tween the plaintiff in error and the defendant corporation, for they seek to make him concur in an agreement which, under his bond, he had a right to ignore, and to disregard, as being outside of, and opposed to the meaning and intent of his original contract.

In consequence of financial difficulties, the defendant corporation, which nine years before had issued these bonds, and taken the money for them, applied to the legislature and obtained the acts of Assembly referred to (page 5 of paper book of plaintiff in error). If we condense those 12 pages of enactments to obtain all that is requisite for the argument of this case, we find that the act of 1882 in its preamble set forth that "it has been represented to the legislature "that a very large majority of the bondholders of the Union "Canal Company who are secured by the first mortgage of "that corporation, dated the 23d August, 1853, . . . having "expressed their willingness to contribute for distribution "among the general creditors . . . certain overdue coupons" which are to be paid to the general creditors, who were then to become (page 7) entitled, by virtue of the surrender of the said coupons, equally and ratably to the benefit and protection of the said first mortgage, dated August 23d, 1853. By the 3d section of the act of 1862 (page 9) it is provided, that in case that at the meeting called, or any adjourned meeting, a majority of stockholders and bondholders (who are made one by these acts) accept this proposed agreement, notice shall be given in two daily newspapers of the city of Philadelphia, at least three times a week, for four weeks, *and in case any such bondholder shall fail to file with the president of said corporation, his or her refusal in writing, to concur in such arrangement within three months of the date hereof, such bondholder shall be taken to have agreed to the same.*

In consequence of a two-third vote of the mixed company of stocknolders and bondholders accepting the terms proposed, the act of 1863 was passed to carry out the said agreement.

We see that the scheme of these acts contemplated the surrender of the overdue coupons by the bondholders, to the general creditors of the company, or rather the erecting them into an increase of the bonds to $3,000,000, thus adding one-fifth to the mortgage debt without any increase being made to the security. Thus it appears that this agreement, to which this supposititious consent was given by the act of 1862, impaired the contract of the plaintiff in error, in two ways: first, by wiping out his overdue coupons; secondly, by reducing his security one-fifth. It is contended that these acts show two substantial violations of this contract, and upon either of them being pointed out to a court of competent jurisdiction, the illegality of the acts should have been decreed. That there was no power to bind dissenting bondholders, was freely admitted, for everywhere provision is made for them.

But, says the 3d section of the act of 1862, if the bondholder does not file his dissent in writing within three months, etc., he shall be taken to have assented; and when this plaintiff demanded the payment of his coupons, he was met with this proviso, and informed that, having remained silent, his coupons were gone.

The law has often undertaken to express the intention and wills of dead men, and has, from reasons of public policy, by public laws, controlled and moderated remedies against debtors, but to claim to speak for a living man, to express an opinion as to the conduct of his own finances, to formulate an assent by the terms of a private act of Assembly, it is respectfully urged, is an arbitrary exercise of power hitherto unheard of, and exceeds any precedent in the annals of law. For whilst, by the rough usages of mediæval judges, an assent was sometimes extorted by the persuasive power of the thumb-screw, or by the forcible arguments of the rack, rights of property were waived, and creditors were moved to became generous, it was at least permitted to the victims to remain silent if they were so disposed. To enact by legis-

lation an assent or dissent for a creditor to his pecuniary detriment, is reserved for modern lawmakers; and for a commonwealth (distinguished above all others as the original exemplar of free thought, and free expression of it), to pass, and have its court of last resort countersign and make current, acts of Assembly, whose theory, in its logical sequence is more destructive to rights of property than was ever the *peine forte et dure*.

When these acts were interposed as a defence to the action in the county court, the injustice was apparent, and their unconstitutionality promptly recognized.

The Presiding Judge, LUDLOW, says in his opinion, *inter alia* (and his forcible reasoning is in strong contrast with the doubtful utterances of the reversing opinion):

"This legislation endeavors to destroy the rights of a "creditor simply because he remains silent. That this can- "not be done appears to be certain.

"1. Because the bondholder is a creditor of the corpora- "tion, and, as a creditor, holds a contract with the company "for the payment of money, which contract is protected by "the laws of the State and the Federal Constitution.

"2. While there may be cases where silence may by a "jury be interpreted to mean consent, this is not one of "them, for the debtor has no right by legislation to impose "terms upon a creditor not within the intent and meaning "of the original contract.

"These points seem to us to be so clear as to require little "if any argument to sustain them.

"That the claim of the plaintiff is based upon a contract "is not denied. To declare that he shall, by any legislation, "lose the fruit of it, is to break the contract, and when an "attempt is made in that direction the creditor simply "points to his bond.

"He may be foolish to act thus, or he may be wise, but "that is nothing to us; he simply clings to his bargain, and "that he has a right to do. Can a debtor impose terms on "a creditor, or compel him to speak if he chooses to remain

"silent? Such has not been determined to be the law, as "between private persons, and the most powerful corpora- "tion has not yet obtained greater rights."

"This contract declared that upon such an amount of "money such an amount of interest should be paid. This "act of Assembly, after providing how the debts of this "corporation shall be consolidated or reduced at a joint "meeting of stockholders and bondholders, provides that "any creditor who does not dissent in writing within three "months 'shall be taken to have agreed to the same.' Be- "tween private individuals, the proposition involved in the "act now under consideration, would be so absurd as to be "unworthy of consideration. A. holds B.'s bond and mort- "gage. B. notifies A. that within one week he will pay fifty "per cent. in full payment and satisfaction thereof, and if "he does not object in writing he will be taken to have "agreed to his proposition. Would A. be bound by his "silence? It is impossible. Is there any difference because "the debtor is a corporation? The contract was a good "one, the creditor has a right to demand payment. No "legislation can destroy this right because it cannot compel "him to speak."

This is the case of the plaintiff in error:

There is no question of the fact and validity of the contract.

The acts themselves show at least two ways by which that contract has been impaired.

Nothing can prevail against the force of the 10th section of the 1st Article, in its application, unless it is the proviso of the 3d section of the act of 1862, which claims to assent for the creditor, which proviso is in itself, we maintain, unconstitutional and ineffectual, and we respectfully submit that the judgment of the Supreme Court of Pennsylvania should be reversed, and the safer law of the county court restored.

The majority of the court below were not influenced by the reasons of the county court, nor did they seem to recog-

nize the Federal Constitution as an element in the case, and reversed the judgment. The plaintiff in error will endeavor to show by a careful analysis of the opinion that that judgment was erroneous.

They had before them an unquestioned contract; two acts which admittedly altered and impaired that contract, and the application of the 10th section of Article 1st of the Constitution of the United States to these acts by a county court held in the highest esteem, which decided them to be unconstitutional. All the characteristics of this judgment rendered it eminently worthy of respect. What do we find in Judge Paxson's opinion to sustain its reversal. On page 6 of the transcript, upon which page one-fourth of the opinion is set out, there is no attempt to answer nor even to evade Judge Ludlow's reasoning; on the contrary, at the bottom of the page we read the following words, which are entirely consonant with his views: "It may be conceded "that a debtor, whether a natural or an artificial person, "cannot say to his creditor, unless you signify your dissent "from a certain proposal in a given time I will hold you to "consent and act accordingly."

Thus the court below, on the real question of the case, concedes that the county court was right.

But, say the court below, "The question here is, may the "legislature, as the representative of the people in the exer- "cise of its sovereign will, require a creditor of an embar- "rassed corporation to express his will within a reasonable "time in regard to measures believed to be essential to the "interests of both creditors and stockholders. The power of "the legislature is supreme except where restrained by fun- "damental laws. No presumption arises that a law is uncon- "stitutional; on the contrary, every presumption is in favor "of its constitutionality."

We answer, First, that the legislature of 1853, "as the rep- "resentative of the people in their sovereign will," authorized

the issue of these bonds, which were to run thirty years, and we bought and paid for them on the faith of that act of Assembly, and thus our contract was created under the best possible auspices.

Second. We claim that we are precisely within the exception, and are here asserting that fundamental law.

Third. There is no presumption sought to be raised, there is none needed. This is not a case of doubtful contract between man and man, depending upon memories, identities, or perjuries, between corporation and corporation, involving constructions of acts of Congress and legislatures, mutualities and franchises, tax laws or customs, but it is a simple demand to be protected in a contract by the United States Constitution against as direct an attack upon the rights of property as was ever made by a lawmaking power.

The opinion proceeds to enumerate certain acts of Assembly of like import with the acts complained of, but this admission immediately follows, "the question, now under consid-"eration, has not been raised under either of the above-men-"tioned acts, and their existence cannot, therefore, be accepted "as conclusive evidence of their constitutionality." It is submitted that a mere multiplicity of untested acts offers no evidence, conclusive or otherwise as to the constitutionality of any one of them.

That "the approval of two co-ordinate departments of the "government should have weight in deciding the legality of a "law, because large and important interests have been ad-"justed upon such legislation," is a proposition which may be paraphrased thus: If a facile legislature passes an act, a perfunctory governor signs it, and the timid few who are outsiders dread a contest with a powerful corporation, the laws of Pennsylvania are not reliable, to protect the daring creditor who claims the payment of his debts, contracted under the sanction of the same "two co-ordinate departments of "government" of a previous year.

The court below further states. "It is not difficult to find "in the general legislation of the State much that bears a close "analogy to the section of the act of 1862," and quotes acts which refer exclusively to stockholders. It will be attempted in this argument for the plaintiff in error to show that stockholders and bondholders are entirely different. The plaintiff in error is ready to admit that stockholders (who are but partners) may be affected by their fellows, with or without the aid of legislation. The more clearly it is shown that the stockholder of a corporation is susceptible to legislative domination, the more conspicuous is the absolute independence of the bondholders. It is respectfully suggested that if, instead of two or three acts relating to the co-relative or co-operative duties of stockholders, a thousand had been cited as having been enacted, they could have had no more power over the bondholder who, having purchased his bonds, put them into his trunk and sailed to China, than had the liquor laws of Maine or the poor laws of Texas.

A creditor who buys his bond is subject to no power which has not been indicated in, or imposed upon his contract. The question in this case is one of right, not of remedy. It is denied that the liability of the stockholder is cognate to that of the bondholder, for the latter as a creditor is protected in his contract, while the stockholder is at the mercy of his partners to any extent of legislation.

It is claimed by the other side that the third section of the act of 1862 is an act of limitation. If that is so, it differs from the ordinary acts of limitation in at least two important features, viz.: its principle and its operation. This act of 1862 is mandatory on the creditor, those acts merely confer a privilege upon the debtor of which he may or may not avail himself, those acts are founded on a reason or principle which does not exist in this case. By the laches of the creditor in neglecting to sue when he has acquired the right, he is in a quasi default, and to protect the debtor who by this

delay may be deprived of his means of defence, the law intervenes to protect him.

And so with the stay laws; they deal with the remedy, and not with the right. From public policy, a creditor's leniency may be enforced, but it is contended here, that no antecedent debt, such as this, could be scaled, principal or interest, legally, by any legislative enactment.

The bankrupt laws are United States laws, which derive their authority from the same source of power as this court, but alike with the insolvent laws of the State of Pennsylvania, we claim they have no force in illustrating the argument of the court below. This plaintiff protecting himself in advance against such laws, selected a specific character of indebtedness, secured by a specific pledge, which pledge was fortified by the great seal of the commonwealth. The highest officers of justice of that commonwealth have failed to support this act of their State; hence this writ of error. The wisdom of the framers of the Constitution of the United States provided for exactly this case in the 10th section of Article I., one of the earliest of their provisions, which says: "No State shall "pass any attainder, ex-post-facto law, or any law impair-"ing the obligations of contracts."

To this Honorable Court the exclusive expounders of that great charter, the plaintiff in error confidently appeals, not merely as a suitor dissatisfied with an adverse judgment, but he stands forth on behalf of the fifty millions whose rights under the Constitution, depend upon your Honors' construction, claiming its protection against the national wrong of unlawful legislation and careless judiciaries.

JAS. DUVAL RODNEY,
Of Counsel for Plaintiff in Error.

109-101

OFFICE SUPREME COURT U. S.
FILED
APR 17 1883
JAMES H. McKENNEY, Clerk

*No. 262.*

# In the Supreme Court of the United States.

JOHN G. GILFILLAN, Plaintiff in Error,

*vs.*

THE UNION CANAL COMPANY OF PENNSYLVANIA, Defendant in Error.

Of October Term, 1880. No. 852.

*Writ of Error to Supreme Court of Pennsylvania.*

## PAPER-BOOK OF DEFENDANT IN ERROR.

THOMAS HART, JR.

Allen, Lane & Scott, Printers, 229-231 South Fifth Street, Philadelphia.

# In the Supreme Court of the United States.

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|---|---|
| *John G. Gilfillan, Plaintiff in Error,* | |
| vs. | October Term, 1880. |
| *The Union Canal Company of Pennsylvania, Defendant in Error.* | No. 852. |

WRIT OF ERROR TO SUPREME COURT OF PENNSYLVANIA.

## BRIEF OF ARGUMENT FOR DEFENDANT IN ERROR.

This is indeed, as plaintiff in error says, a narrow case, that is, there is a single plain question involved in it, namely: Did the Legislature of Pennsylvania transcend its power in the passage of the acts of April 10th, 1862, and April 22d, 1863, supplements to previous acts relating to the Union Canal Company?

The Supreme Court of Pennsylvania has said in an opinion (Transcript, page 6) covering the whole ground, that it did not; and the defendant in error, with as much confidence as it appears the learned counsel for the plaintiff in error exhibits for the contrary opinion, submits that that court was entirely correct in its judgment. The case, or rather the legislation, which is the subject of attack, is

not unique or isolated. The provisions of 1862 and 1863 have frequently occurred in legislation in Pennsylvania. Some instances are stated hereafter. Their constitutionality has never before been doubted, and it will scarcely account for this somewhat extraordinary fact, during a period of more than thirty years, to designate the branches of government responsible therefor, as "facile legislatures and perfunctory governors," and to deplore the lack of "daring creditors" to teach them their proper functions.

The first thing, and which alone will clear the case of any real difficulty, is to attentively consider the acts themselves.

The first one, that of April 10th, 1862, provided for a scheme by which the Union Canal Company was to be relieved from its financial difficulties. It had issued bonds to the amount of $2,500,000, and secured them by a first mortgage made August 23d, 1853, and upon which bonds, the coupons for several years were overdue and unpaid. The scheme contemplated the surrender by the bondholders of these coupons, and their distribution among the other creditors of the company, or rather the funding of these coupons into a further issue of bonds, not exceeding $500,000, to be secured by the same mortgage, and the use of these latter bonds in settling the liabilities of the company. This would make the issue of bonds $3,000,000, the coupons upon all of which were to be paid out of the net income, revenues, or profits of the company, after the 1st of May, 1861. *Provided always* (see section 1), "*That there shall at no time be any coupons paid or payable otherwise than out of and from the clear net income and profits of the business of the corporation; and the said net income and profits shall be received in full consideration of its coupons falling due.*" By section 3 of said act, a general meeting of the stockholders and of the old bondholders was to be called, whereat the stockholders and bondholders, acting and voting *separately*, might enter into an agreement providing for carrying out the provisions of the act.

Then follow provisions, referring to bondholders dissenting from such an agreement. Particular attention is called to these, for it will be seen that the legislature did not pretend to take away, or in any manner impair, any right of any *dissenting* bondholder.

A notice was to be published, stating that such an agreement had been made, and calling upon such of the bondholders as had not already entered into the agreement, *to express in writing their assent thereto, or their dissent therefrom, within three months from the date thereof.* The agreement then was to bind only those bondholders who should so signify their assent, and those who failed to file within said time a refusal in writing to concur therein. *Any bondholder filing a refusal in writing to concur in the said agreement, was not in any manner to be bound thereby.*

The third section of the act of 1862 entire, is as follows:

SEC. 3. That it shall and may be lawful for the managers of the said corporation, to call a general meeting of the stockholders and of the holders of bonds, now secured by the said mortgage, as soon after the passage of this act as they shall deem expedient, and upon the notice now required for convening meetings of the stockholders; and the said meeting, or any adjourned meeting therefrom (the said stockholders and the bondholders so secured *acting and voting thereat as separate bodies*), may, by a majority of the votes of each body, to be taken and counted as provided in the second section hereof, enter into an agreement, providing for the carrying out of the provisions of this act, and for the settlement of the affairs and liabilities of the said corporation, on such terms and conditions, not inconsistent with the provisions of this act, as may appear to them just and equitable, which agreement shall be binding on the said corporation, *and on all such of the said last-mentioned bondholders as shall signify their assent in writing thereto; and in case any such bondholder shall fail to file, with the president of the said corporation, his or her*

*refusal, in writing, to concur in the said agreement, within three months from the date thereof, such bondholder shall be taken to have agreed to the same,* and in case any such bondholder shall refuse, in writing, to concur in the said agreement, such persons as may have received bonds, in lieu of coupons, under the first section of this act, and all other persons who may have taken interest under, or acted on the faith of such agreement, shall not be prejudiced by having so done; and all new evidences of indebtedness, held or taken by them, shall be deemed to represent their respective original claims and demands, in all their legal positions and rights, so that in any ultimate settlement of the liabilities of the corporation, either in full or *pro rata,* they shall be considered, as against such refusing bondholders, restored to their original positions and rights, and no advantage shall be given, to any refusing bondholder, over them: *Provided, however,* That the said corporation shall, as soon as practicable after the making of the said agreement, publish, in at least two daily newspapers of the city of Philadelphia, at least three times a week, for the period of four weeks, a notice, stating that an agreement had been formed, on the day of the date of the said agreement, between the stockholders and first mortgage bondholders of the company, for the adjustment of the affairs thereof, and *calling upon such bondholders as had not taken part therein, to express in writing their assent to the same, or their dissent therefrom, on or before the expiration of the three months above mentioned.*

The subsequent act of April 22d, 1863, recites what was done under the act of 1862. The act of 1862 was accepted by the stockholders, and out of the $2,500,000 bonds but $85,000 were held by persons who did file their refusal to concur.

The act of 1863 then goes on to provide for the preservation of the rights as well of the non-assenting bondholders as of those who did assent. It was not intended by

these acts that any right should be taken from the non-assenting bondholders, and on the other hand it was not contemplated to allow them to obtain any advantage by such non-assent as against the assenting bondholders, and therefore, it was provided *that the relative rights and interests of both classes should be preserved and continued, as if the act of 1862 had not been passed and the said agreement had not been made.* See section 1 of act of 1863. Plaintiff's paper-book, page 14.

The case stated finds as facts :—

That the agreement provided for in the act of 1862 was actually made on June 9th, 1862, and that it was therein provided, that all interest on the bonds of defendant, secured by the mortgage of August 23d, 1853, theretofore accrued or due or thereafter falling due or accruing, should be paid out of the net income, revenue, or profits of the defendant company accruing after May 1st, 1861, and that there should, at no time, be any coupons paid or payable otherwise than out of and from the clear net income and profits of the business of the corporation, and that said net income and profits should be received in full consideration for its coupons falling due.

The plaintiff here then held the bonds the coupons of which are sued on, *and had actual knowledge of the notice provided for in the act of 1862, and of the matter thereof.*

Some remarks in the argument of the counsel for the plaintiff in error about the latter's possible absence in searching for the North West passage, or in sailing to China, overlook the fact of actual notice to the plaintiff in error. The case is therefore free of any difficulty upon this question. With this actual notice the plaintiff did nothing—*he did not file any refusal in writing to concur in the agreement.*

There has been no clear net income or profits of the business of the company defendant since the making of said agreement.

Now the simple question is, can not the legislature pass a *law* providing, under certain circumstances, that creditors, either of a corporation or individual, shall do an act simply to signify their own minds and provide, protecting all those who do express themselves against the proposed measure, that those who remain silent and passive shall be considered as agreeing to the same. Is it unconstitutional to say to the creditors of either a corporation or individual—"Your debtor is in difficulties, and it is proper to provide, with your assent, for a system of relief? This system is agreeable to, and, in fact, has already been accepted by, a very large majority of your fellows, and your assent is asked for. If you do not assent, of course you are not to be bound, but in order that it may be known who do and who do not agree, you will be taken as assenting, if you do not, within a proper time, otherwise express yourself." Nothing certainly can be more reasonable and, it is urged, less objectionable in matter of legality.

As before stated, this was no new idea, either of the Legislature of Pennsylvania, or of the directors of the Union Canal Company.

The following are some out of many instances in which just such legislation was had:—

By the act of February 17th, 1847 (P. L., 142), "An act for the relief of the creditors of the Philadelphia, Germantown and Norristown Railroad Company," a scheme was inaugurated for the reduction of the company's indebtedness. The provisions of the act are analogous to those of the act of 1862. See section 5, protecting the assenting loanholders against the non-assenting loanholders; section 11, providing that holders of loan or stock, not dissenting in writing before June 1st, 1847, shall be taken to have assented; and section 12, providing for meetings, notice, &c.

By the act of April 7th, 1852 (P. L., 261), "An act for the protection of the creditors of the Schuylkill Navigation Company," the property of the company was put in the

hands of trustees, and the income directed to be applied in a certain way. See section 5. The stockholders and loanholders were to agree upon terms of liquidation of company's liabilities, and issue stock and loans, and, "in case any stockholder or loanholder shall fail to file with the president his or her refusal to concur in such agreement, within six months after notice served upon him or her, such stockholder or loanholder shall be deemed and taken to have agreed to and concurred therein," &c.

By the act of April 10th, 1852 (P. L., 316), "An act for the relief of the creditors of the Susquehanna Canal Company," &c., provision was made for the conversion of the arrears of interest due upon its indebtedness into preferred stock, and for issuing bonds for the principal of the debts. Section 4 provided that all claimants to whom arrear interest should be due, who should not before August 1st, 1852, express in writing their dissent from the provisions of the act, should be taken and considered to have assented thereto, as fully as if such assent had been given in writing. And again, by another act relating to the same company, the act of April 17th, 1861 (P. L., 319), "An act for the relief of the bondholders of the Susquehanna Canal Company," it was provided in section 5, that all coupon bondholders who should not, within *thirty days* after publication of notice, give notice in writing that he or they do dissent from the acceptance of the act, shall be held and regarded to have assented to the act, with like effect as if such assent had been evidenced by writing.

By the act of April 11th, 1862 (P. L., 422), "An act for the relief of the Chester Valley Railroad Company," preferred stock was to be issued for its bonds and unpaid coupons. Section 5 provided for a meeting of stock and bond holders, for a vote upon the acceptance of the act, and for notice of acceptance, and that all coupon bondholders and stockholders who should not, within *thirty*

*days* after notice, give notice in writing to the company that he or they dissented from the acceptance of the act, should be regarded to have assented to and to have accepted the same, with like effect as if such acceptance and assent had been evidenced in writing.

Coming to instances of general legislation in Pennsylvania we find like provisions, thus:—

The act of 16th May, 1861 (Purdon, 1223, pl. 52), authorizing the merger of one railroad company by another, provides a remedy by dissatisfied stockholders as follows:—"And provided further, that if any stockholder * * * shall be dissatisfied with and object to any such consolidation, then it shall and may be lawful for any such stockholder within *thirty* days after the execution of said agreement for consolidation to apply by petition to the Court of Common Pleas," &c.

And the act of 24th March, 1865 (Purdon, 1225, pl. 63), authorizing the consolidation of railroad companies, contains a like provision.

Other acts preserving the rights of stockholders dissenting from a proposed course of action, which could not bind them without their assent, invariably provide for a limited time within which they must act.

The act of March 7th, 1861 (P. L., page 88), "An act for the commutation of tonnage duties," provides that any dissenting stockholder shall proceed to have his stock appraised within six months after passage of the act.

The constitutionality of the railroad consolidation acts, 1861 and 1865, above referred to, has been expressly affirmed. See Lauman *vs.* Lebanon Valley Railroad Company, 6 Casey, 42. Nothing like so much as results in cases thereunder, is done here. In those cases the dissenting stockholder is legislated out of his stock; all he can get is its market value, unaffected by the proposed consolidation. He is obliged to part with it upon these terms. In the present case nothing is taken from the bondholder, and

his position with regard to other bondholders is not altered, *provided he will speak within a reasonable time.*

These latter acts indeed suggest the principle upon which all legislation of this nature is to be sustained; that it is, in fact, a statute of limitations, providing a time, short if you please, but necessarily so, within which the dissatisfied stockholder or bondholder must assert his rights. In the cases of the last three acts and others of that nature, he must start proceedings in court within a certain time; and in instances like that of the Union Canal Act and other similar legislation, he must simply furnish written evidence that he desires his rights preserved.

The Union Canal Acts are simple acts of limitation, giving every bondholder three months within which he must act, if at all. A course is provided, by following which his rights will be preserved, but he must pursue it within the time prescribed.

The books are full of just such acts. Acts of limitation, stay laws, and the like, applying to existing cases, have been upheld. In all thes cases the whole question resolves itself into one of the *reasonableness* of the particular provision, that is, of the time given to the dissenting person to act, bring his suit, or, in case of stay laws, of the exemption from execution.

See Kern *vs.* Browne, 14 P. F. Smith, 55, wherein the seventh section of the act of April 27th, 1855 (P. L., 369), which was a statute of limitations as to ground-rents, and which provided for its going into effect within three years from the passage of the act, was held to be retrospective and constitutional.

And Chadwick *vs.* Moore, 8 W. & S., 49;

Breitenbach *vs.* Bush, 8 Wright, 313;

Coxe *vs.* Martin, *Id.*, 322;

upon the constitutionality of the stay laws of Pennsylvania.

No question is raised in this case as to the reasonableness of the time, three months, within which the would-be dissenting bondholders of the Union Canal Company are called upon to express their dissent. It could, at any rate, scarcely be contended that three months was not a reasonable period. The great number of acts upon subjects like this in which the same term is given for dissent without any adjudication against their validity, should determine such a question. In view of so many instances of the adoption of a like period, it could not be said to be palpably erroneous.

As to this see Terry *vs.* Anderson, 5 Otto, 628, that an enactment reducing the time prescribed for the statute of limitations in force when the right of action accrued, is not unconstitutional, provided a reasonable time be given for the commencement of a suit before it takes effect. The court said, page 633, "The question is one of reasonableness, and we have therefore only to consider whether the time allowed is, under all circumstances, reasonable. *Of that the legislature is primarily the judge, and we can not overrule the decision of that department of the Government, unless palpable error has been committed.* In judging of that we must place ourselves in the position of the legislators, and must measure the time of limitation in the midst of the circumstances which surrounded them, as nearly as possible, for what is reasonable in a particular case depends upon its particular facts." * * "The circumstances under which the statute was passed seem to justify the action of the legislature. The time, though short, was sufficient to enable creditors to elect whether to enforce their claims or abandon them."

Terry *vs.* Anderson was a case of similar features with the present one. The act of limitations of Georgia, of March 16th, 1869, was passed, as recited in the preamble, on account of the confusion "grown out of the distracted condition of affairs during the late war." It barred suits

upon all causes of action accruing before the close of the war if not commenced by January 1st, 1870. The court said further, page 634, alluding to the condition of affairs at the time of the passage of the act: "This clearly presented a case for legislative interference within the just influence of constitutional limitations. For this purpose the obligations of old contracts could not be impaired, but their prompt enforcement could be insisted upon or an abandonment claimed. That, as we think, has been done here and no more. At any rate there has not been such an abuse of legislative power as to justify judicial interference. As was said in Jackson *vs.* Lamphire, 3 Peters, 280, the time and manner of their operation (statutes of limitation), the exceptions to them, and the acts from which the time limited shall begin to run, will generally depend on such sound discretion of the legislature, according to the nature of the titles, the situation of the country, and the emergency which leads to their enactment."

Very little need be said in answer to the opinion of the county court below, upon which the learned counsel relies so much. The learned judge delivering the opinion seemed to think, that because a private person could not call upon his debtor to do something within a certain time, or else lose his debt, that a corporation could not. So much might be conceded; for no debtor, either individual or corporate, can of his or its own motion call upon a creditor to do some act, or otherwise be barred of right of action. But this statement entirely leaves out of view the fact that the legislature has passed a *law*, requiring the creditor to act within a reasonable time. There is no difference between individuals and corporations in such a case. Such a law might also apply to private persons and their creditors, and it would be good in both cases.

The argument of the learned counsel for the plaintiff in error contains much that will be readily acceded to. Certainly, the agreement made between the bondholders and

the canal company under the provisions of the act of 1862 did alter the original bond so far as the payment of the coupons was concerned, and no one pretends that this could be done without the bondholders' assent.

The acts of Assembly do not themselves propose that they shall affect any dissenting bondholders. The single question is, did not the plaintiff in error assent to it. He did, if the Legislature of Pennsylvania could call upon him to signify his dissent, with notice, in the event of inaction, that he would be taken to have assented.

The learned counsel suggests, however, in answer to the numerous like acts of Assembly and authorities sustaining them, that many of them were cases of stockholders and not of bondholders, and that they can not apply to cases of creditors of a corporation. But there is no difference at all. Each has a contract right, each property protected by the Constitution and laws. The rights of neither can be taken away or impaired by a majority of his fellows without his consent. With it, of course, they can. The only question is as to consent; and cases, therefore, upon the subject of a stockholder's assent are entirely applicable to the case of a bondholder.

See following other cases:

Martin *vs.* Pensacola and Georgia R. R. Co., 8 Florida, 370, was an action against a stockholder to recover assessments upon his shares. The defense was that the corporation had accepted an amendment which radically altered its original charter. It was held that to render this plea effective, the stockholder must show affirmatively that he dissented from the alteration in a reasonable time. The amendment was accepted at a meeting of the stockholders, but there was no evidence to show whether or not the defendant was present, nor was there any evidence that he ever objected to the act of acceptance.

In North Carolina R. R. Co. *vs.* Leach, 4 Jones (Law N. C.), 340, it was held that a stockholder in a railway

company, who seeks to avoid the payment of his subscription upon the ground that one of the termini was materially changed from that designated in the charter, must show that the alteration was made without his consent.

Ireland *vs.* Palestine, &c., Turnpike Campany, 19 Ohio State Rep., 369. A turnpike company was organized in 1852, the plaintiff being a subscriber to the stock. The law under which the company organized imposed no personal liability on the stockholders. By the provisions of a subsequent act, companies accepting its provisions were authorized to issue bonds, and the stockholders of all companies accepting the same were to become individually liable for the debts to the amount of their stock, and by another act a majority of stockholders might, in case of such personal liability, call upon all stockholders to pay their *pro rata* of the indebtedness of the company. The turnpike company accepted the provisions of these acts, and issued bonds thereunder, which having matured, the stockholders present at a duly-called meeting made a general assessment to pay the same. This was a suit to recover such an assessment.

The court said: "We fully agree that the stockholder may waive his constitutional right, and become liable by his own act or consent. For this purpose it is not even necessary he should give his express or direct consent. It may be implied, or he may be estopped from denying it by his acts, or by his silence and apparent acquiescence."

In that case, however, there was no evidence whatever of assent, express or implied, of the stockholder.

The case of the Philad'a, Wilmington & Balto. R. R. Co. *vs.* Cowell, 4 Casey, 329, is a significant one upon the subject of a party's silence, and its effect in the way of ratification. There one person (acting without authority) subscribed for and in the name of another for certain shares of stock, and immediately advised the latter of his act, who, however, never made any reply. Nearly seven